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17
18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 AMERANTH, INC.

21 Plaintiff,

22 v.

23 GRUBHUB, INC.,

24 Defendant.

Case No. 12-cv-00739-JLS-NLS

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its First Amended Complaint against defendant GrubHub,
3 Inc. (“GrubHub”), avers as follows:

4 **PARTIES**

5 1. Plaintiff Ameranth, Inc. (“Ameranth”) is a Delaware corporation having a principal
6 place of business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121. Ameranth
7 develops, manufactures and sells, *inter alia*, hospitality industry, entertainment, restaurant and
8 food service information technology solutions under the trademarks 21st Century
9 Communications™, and 21st Century Restaurant™, among others, comprising the
10 synchronization and integration of hospitality information and hospitality software applications
11 between fixed, wireless and/or internet applications, including but not limited to computer
12 servers, web servers, databases, affinity/social networking systems, desktop computers,
13 laptops, “smart” phones and other wireless handheld computing devices.

14 2. Defendant GrubHub, Inc. (“GrubHub”) is, on information and belief, a Delaware
15 corporation having a principal place of business in Chicago, Illinois. On information and
16 belief, GrubHub makes, uses, offers for sale or license and/or sells or licenses restaurant and
17 foodservice information technology products, software, components and/or systems within this
18 Judicial District, including the GrubHub Ordering System as defined herein.

19 **JURISDICTION AND VENUE**

20 3. This is an action for patent infringement arising under the Patent Laws of the United
21 States, 35 U.S.C. §§ 271, 281-285.

22 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
23 1338(a).

24 5. On information and belief, Defendant engages in (a) the offer for sale or license and
25 sale or license of hospitality, restaurant, food service, ordering, products and/or components in
26 the United States, including this Judicial District, including services, products, software, and
27 components, comprising wireless and internet POS and/or hospitality aspects; (b) the
28 installation and maintenance of said services, products, software, components and/or systems

1 in hospitality industry, restaurant, food service, and/or entertainment information technology
2 systems in the United States, including this Judicial District; and/or (c) the use of hospitality
3 industry, restaurant, food service, and/or entertainment information technology systems
4 comprising said services, products, software, components and/or systems in the United States,
5 including this Judicial District.

6 6. This Court has personal jurisdiction over Defendant because Defendant commits acts
7 of patent infringement in this Judicial District including, *inter alia*, making, using, offering for
8 sale or license, and/or selling or licensing infringing services, products, software, components
9 and/or systems in this Judicial District.

10 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and
11 1400(b).

12 BACKGROUND

13 8. Ameranth was established in 1996 to develop and provide its 21st Century
14 Communications™ innovative information technology solutions for the hospitality industry
15 (inclusive of, e.g., restaurants, hotels, casinos, nightclubs, cruise ships and other entertainment
16 and sports venues). Ameranth has been widely recognized as a technology leader in the
17 provision of wireless and internet-based systems and services to, *inter alia*, restaurants, hotels,
18 casinos, cruise ships and entertainment and sports venues. Ameranth's award winning
19 inventions enable, in relevant part, generation and synchronization of menus, including but not
20 limited to restaurant menus, event tickets, and other products across fixed, wireless and/or
21 internet platforms as well as synchronization of hospitality information and hospitality
22 software applications across fixed, wireless and internet platforms, including but not limited to,
23 computer servers, web servers, databases, affinity/social networking systems, desktop
24 computers, laptops, "smart" phones and other wireless handheld computing devices.

25 9. Ameranth began development of the inventions leading to the patent-in-suit and the
26 other patents in this patent family in the late Summer of 1998, at a time when the then-
27 available wireless and internet hospitality offerings were extremely limited in functionality,
28 were not synchronized and did not provide an integrated system-wide solution to the pervasive

1 ordering, reservations, affinity program and information management needs of the hospitality
2 industry. Ameranth uniquely recognized the actual problems that needed to be resolved in
3 order to meet those needs, and thereafter conceived and developed its breakthrough inventions
4 and products to provide systemic and comprehensive solutions directed to optimally meeting
5 these industry needs. Ameranth has expended considerable effort and resources in inventing,
6 developing and marketing its inventions and protecting its rights therein.

7 10. Ameranth's pioneering inventions have been widely adopted and are thus now
8 essential to the modern wireless hospitality enterprise of the 21st Century. Ameranth's
9 solutions have been adopted, licensed and/or deployed by numerous entities across the
10 hospitality industry.

11 11. The adoption of Ameranth's technology by industry leaders and the wide acclaim
12 received by Ameranth for its technological innovations are just some of the many
13 confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received
14 twelve different technology awards (three with "end customer" partners) and has been widely
15 recognized as a hospitality wireless/internet technology leader by almost all major national and
16 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and
17 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for
18 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its
19 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.
20 In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
21 information technology for the betterment of mankind." This prestigious award was based on
22 Ameranth's innovative synchronization of wireless/web/fixed hospitality software technology.
23 Subsequently, the United States Patent and Trademark Office granted Ameranth a number of
24 currently-issued patents, two of which are the basis for this lawsuit. Ameranth has issued press
25 releases announcing these patent grants on business wires, on its web sites and at numerous
26 trade shows attended by various of the Defendants since the first of the two presently-asserted
27 patents issued in 2002. A number of companies have licensed patents and technology from
28 Ameranth, recognizing the value of Ameranth's innovations.

RELATED CASE PREVIOUSLY FILED

12. The Ameranth patent asserted herein, U.S. Patent No. 8,146,077 (the “’077 patent”), is the fourth patent to issue in Ameranth’s “Information Management and Synchronous Communications” patent family.

13. Ameranth is also currently asserting eight claims of the first three of its patents in a separate litigation pending in this Court (*Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS) against several parties, including GrubHub.

COUNT I

Patent Infringement (U.S. Pat. No. 8,146,077)

(35 U.S.C. § 271)

14. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-14 above as if fully set forth herein.

15. On March 27, 2012, United States Patent No. 8,146,077 entitled “Information Management and Synchronous Communications System with Menu Generation, and Handwriting and Voice Modification of Orders” (a true copy of which is attached hereto as **Exhibit A** and incorporated herein by reference) was duly and legally issued by the United States Patent & Trademark Office.

16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in and to the ‘077 patent.

17. On information and belief, Defendant directly infringes and continues to directly infringe one or more valid and enforceable claims of the ‘077 patent, in violation of 35 U.S.C. § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing systems, products, and/or services in the United States without authority or license from Ameranth, including but not limited to the following: (a) The GrubHub ordering system/product/service, which includes, inter alia, wireless and internet POS integration, online and mobile ordering, delivery and order management applications for mobile devices, tablets, and other computers, integration with other online/mobile ordering systems/products/services including but not limited to OLO Online Ordering, integration with e-mail and affinity

1 program and social media applications such as Facebook, Twitter, Groupon, and YouTube,
2 and/or other third-party web-based applications, and other hospitality aspects (“GrubHub
3 Ordering System”); (b) The Campusfood ordering system/product/service, which includes,
4 inter alia, wireless and internet POS integration, online and mobile ordering, integration with
5 other online/mobile ordering systems/products/services, integration with e-mail and affinity
6 program and social media applications such as Facebook, Twitter, Groupon, and YouTube,
7 and/or other third-party web-based applications, and other hospitality aspects (“Campusfood
8 Ordering System”); and (c) The Allmenus system/product/service, which includes, inter alia,
9 configuring and transmitting menus, online and mobile ordering (via integration with the
10 GrubHub Ordering System), integration with e-mail and affinity program and social media
11 applications such as Facebook, Twitter, Groupon, and YouTube, and/or other third-party web-
12 based applications, and other hospitality aspects (“Allmenus System”)

13 18. On information and belief, the GrubHub Ordering System, the Campusfood Ordering
14 System, the Allmenus System, and each of them, as deployed and/or used at or from one or
15 more locations by GrubHub, its agents, distributors, partners, affiliates, licensees, and/or their
16 customers, infringes one or more valid and enforceable claims of the ‘077 patent, by, *inter alia*,
17 enabling ordering and other hospitality functions via iPhone, Android, and other internet-
18 enabled wireless handheld computing devices as well as via Web pages, storing hospitality
19 information and data on at least one database, on at least one wireless handheld computing
20 device, and on at least one Web server and Web page, and synchronizing applications and data,
21 including but not limited to applications and data relating to orders, between at least one
22 database, wireless handheld computing devices, and at least one Web server and Web page;
23 utilizing communications control software enabled to link and synchronize hospitality
24 information between at least one database, wireless handheld computing device, and web page,
25 to display information on web pages and on different wireless handheld computing device
26 display sizes, and to allow information to be entered via Web pages, transmitted over the
27 internet, and automatically communicated to at least one database and to wireless handheld
28 computing devices; allowing information to be entered via wireless handheld computing

1 devices, transmitted over the internet, and automatically communicated to at least one database
2 and to Web pages.

3 19. On information and belief, Defendant indirectly infringes, as of the date of filing
4 and/or service of this complaint, one or more valid and enforceable claims of the '077 patent,
5 in violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct
6 infringement by other persons.

7 20. On information and belief, customers of GrubHub, including consumers and
8 restaurant operators, use the GrubHub Ordering System, the Campusfood Ordering System, the
9 Allmenus System, and each of them, in a manner that infringes upon one or more valid and
10 enforceable claims of the '077 patent. GrubHub provides instruction and direction regarding
11 the use of the GrubHub Ordering System, the Campusfood Ordering System, the Allmenus
12 System, and each of them, and advertises, promotes, and encourages the use of the GrubHub
13 Ordering System, the Campusfood Ordering System, the Allmenus System, and each of them.

14 21. On information and belief, Defendant actively induces others to infringe the '077
15 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting
16 customers of GrubHub, including consumers and restaurant operators, to use the infringing
17 GrubHub Ordering System, Campusfood Ordering System, Allmenus System, and each of
18 them in the United States without authority or license from Ameranth.

19 22. On information and belief, Defendant contributorily infringes and continues to
20 contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation
21 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
22 of the '077 patent read, constituting a material part of the invention, knowing that the
23 components were especially adapted for use in systems which infringe claims of the '077
24 patent.

25 23. By distributing, selling, offering, offering to sell or license and/or selling or licensing
26 the GrubHub Ordering System, the Campusfood Ordering System, the Allmenus System, and
27 each of them, Defendant provides non-staple articles of commerce to others for use in
28 infringing systems, products, and/or services. Additionally, GrubHub provides instruction and

1 direction regarding the use of the GrubHub Ordering System, the Campusfood Ordering
2 System, the Allmenus System, and each of them, and advertises, promotes, and encourages the
3 use of the GrubHub Ordering System, the Campusfood Ordering System, the Allmenus
4 System, and each of them. Users of the GrubHub Ordering System, the Campusfood Ordering
5 System, the Allmenus System, and each of them, directly infringe one or more valid and
6 enforceable claims of the '077 patent, for the reasons set forth hereinabove.

7 24. On information and belief, the GrubHub Ordering System, the Campusfood Ordering
8 System, the Allmenus System, and each of them, infringes one or more valid and enforceable
9 claims of the '077 patent, for the reasons set forth hereinabove.

10 25. If Defendant does not cease and desist the aforesaid infringing activities, and instead
11 continues to infringe valid and enforceable claims of the '077 patent after the date of filing
12 and/or service of this complaint, then such infringing actions will have been done with
13 knowledge and willful disregard of Ameranth's patent rights, making this an exceptional case
14 within the meaning of 35 U.S.C. § 285.

15 26. The aforesaid infringing activity of Defendant directly and proximately causes
16 damage to plaintiff Ameranth, including loss of profits from sales it would have made but for
17 the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause
18 irreparable injury to Ameranth for which there is no adequate remedy at law.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against Defendant,
21 as follows:

22 1. Adjudging that the manufacture, use, offer for sale or license and /or sale or
23 license of the GrubHub Ordering System, the Campusfood Ordering System, the Allmenus
24 System, and each of them, infringes valid and enforceable claims of the '077 patent, as set
25 forth hereinabove;

26 2. Adjudging that Defendant has infringed, actively induced others to infringe
27 and/or contributorily infringed valid and enforceable claims of the '077 patent, as set forth
28 hereinabove;

1 3. If Defendant does not cease and desist the aforesaid infringing activities and
2 instead continues to infringe valid and enforceable claims of the '077 patent after the date of
3 filing and/or service of this Complaint, adjudging that Defendant's infringement of the valid
4 and enforceable claims of the '077 patent has been knowing and willful;

5 4. Enjoining Defendant, and its officers, directors, employees, attorneys, agents,
6 representatives, parents, subsidiaries, affiliates and all other persons acting in concert,
7 participation or privity with Defendant, and their successors and assigns, from infringing,
8 contributorily infringing and/or inducing others to infringe the valid and enforceable claims of
9 the '077 patent;

10 5. Awarding Ameranth the damages it has sustained by reason of Defendant's
11 infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

12 6. If Defendant does not cease and desist the aforesaid infringing activities and
13 instead continues to infringe valid and enforceable claims of the '077 patent after the date of
14 filing and/or service of this Complaint, awarding Ameranth increased damages of three times
15 the amount found or assessed against Defendant by reason of the knowing, willful and
16 deliberate nature of Defendant's acts of infringement pursuant to 35 U.S.C. § 284;

17 7. Adjudging this to be an exceptional case and awarding Ameranth its attorney's
18 fees pursuant to 35 U.S.C. §285;

19 8. Awarding to Ameranth its costs of suit, and interest as provided by law; and

20 9. Awarding to Ameranth such other and further relief that this Court may deem
21 just and proper.

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DEMAND FOR JURY TRIAL

Ameranth demands trial by jury of its claims set forth herein to the maximum extent permitted by law.

Respectfully submitted,

Dated: May 14, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

By: /s/ William J. Caldarelli
William J. Caldarelli

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